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Paper No. 5

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**OFFICE OF PETITIONS**

In re Application of	:	
Gene E. Myers	:	
Application No. 10/037,462	:	DECISION GRANTING
Filed: October 30, 2001	:	PETITION
Attorney Docket No. 061128.00004	:	

This is a decision on the communication filed April 29, 2002, requesting that the above-identified application be accorded a filing date of October 30, 2001, rather than the presently accorded filing date of December 30, 2001. The paper is properly treated as a petition under 37 CFR 1.10(c).

Applicant requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on October 30, 2001, pursuant to the requirements of 37 CFR 1.10. In support, applicants provided, *inter alia*, a copy of the Express Mail label, receipt No. EL867464342US, showing a Date-In of October 30, 2001. The same Express Mail receipt number was referred to in the copy of the original transmittal letter found in the present application. Applicant requests that the application be accorded a filing date of October 30, 2001.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "Date In" on the Express Mail label, MPEP 513. That is the date that verifies that the package was actually mailed. In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on October 30, 2001.

The petition is granted.

Receipt is acknowledged of the statutory basic filing fee, formal drawings, and the declaration filed April 29, 2002, in response to the Notice mailed March 13, 2002.

The application is being returned to Initial Patent Examination Division for correction of the filing date to October 30, 2001.

Telephone inquiries specific to this matter should be directed to Wan Laymon at (703) 306-5685.

*Sherry Brinkley*

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